

REMARKS

Claims 1-17 have been examined. With this amendment, claim 5 has been canceled and claims 18-22 have been added. Claims 1-4, and 6-22 are all the claims pending in the application.

1. Formalities

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for confirming that the certified copy of the priority document has been received.

2. Claim Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 1-17 as being anticipated by Simon (US 5,266,381) [“Simon”]. For at least the following reasons, Applicant traverses the rejection.

A. Claims 1-4, 6, 7 and 12-15

Claim 1 recites an image processing method using “input digital image data.” (emphasis added). Applicant submits that Simon does not disclose or suggest the use of digital images and, in fact, the dry transfer method disclosed in Simon would not work with digital image data since the dry transfer method must be performed on a hardcopy image (i.e. a photograph)(see col. 1, lines 36-64).

In addition, claim 1 recites that the “digital composite processing includes adjusting ... densities of an eyelid ... in an image to composite so as to conform to those in an image to be composited.” The Examiner contends that Simon discloses this feature. Applicant submits that Simon is completely silent on any adjustment based on the density of an eyelid.

Applicant submits that claims 2-4, 6, 7 and 12-15 are patentable at least by virtue of their dependency on claim 1.

In addition, claim 2 recites an image processing method “wherein said digital composite processing composites an open eye image of a same person on said closed eye image.” The Examiner contends that the overlaying disclosed in Simon reads on the claimed compositing.

Simon discloses that dry-transfer indicia in the shape of eyes are screen-printed on a substrate (col. 2, lines 28-31). These indicia are then rubbed (overlaying) onto the photograph (col. 3, lines 18-20). There is no disclosure or suggestion in Simon that the eyes printed on the substrate are based on the same person being photographed as set forth in claim 2. In fact, the disclosure in Simon suggests that the eyes printed on the substrate are generic and do not belong to any one individual.

Claim 3 recites that “digital composite processing composites an open eye image of a person other than a same person to said closed eye image.” For at least reasons similar to those given above with respect to claim 2, Applicant submits that Simon does not disclose that the eyes printed on the substrate are of any one person, and therefore, Simon does not necessarily disclose the claimed combination.

Claim 6 recites that the “adjusting step is performed automatically based on one or more characteristics of image characteristics of said image to be composited including a . . . density of the neighbor of the eye.” The Examiner contends that “the dry transfer technology is used for automation,” but does not explain as to how it is automated.

Applicant submits that, as stated above, Simon discloses that the dry transfers formed in the shapes of eyes must be rubbed on the photograph. There is no disclosure or suggestion that

this can be done automatically or that that there is an automatic adjustment of the dry transfers based on at least the claimed “density of the neighbor of the eye” as set forth in claim 6.

Claim 7 recites that the “adjusting step is performed manually by an operator based on a menu which changes a size, angle, color, density and aspect ratio of the eye of said image to composite.” The Examiner contends that “hand-painting eyes over the closed eyelids corresponds to a manual operation.” Applicant submits that there is no disclosure or suggestion that any adjustment is based on the “density and aspect ratio of the eye” as set forth in claim 7.

Claim 15 recites that “a position or a shape of a pupil can be changed to be capable of adjusting a line of vision by both eyes.” The Examiner contends that fig. 4 discloses this feature, but provides no further analysis.

Simon discloses that sheet 10 is rotated or otherwise oriented to align the eye-indicia 16 over the closed eye (col. 3, lines 11-14). There is no disclosure or suggestion in Simon of adjustment of a line of vision of both eyes by adjusting the position or a shape of a pupil. Therefore, Applicant submits that Simon does not disclose the claimed combination.

B. Claim 5

Applicant has canceled claim 5.

C. Claims 8, 10 and 11

Applicant has amended claim 8 and rewritten claim 8 in independent form. Claim 8 recites an image processing method using “input digital image data.” (emphasis added). Applicant submits that Simon does not disclose or suggest the use of digital images and, in fact, the dry transfer method disclosed in Simon would not work with digital image data since the dry

transfer method must be performed on a hardcopy image (i.e. a photograph)(see col. 1, lines 36-64).

In addition, claim 8 recites that eye correction processing is performed by “assuming movement of a point on an eyelid based on a characteristic of a shape of the eye image.” The Examiner contends that Fig. 3 discloses this feature but does not give any details in the comments.

Applicant submits that Simon is silent on a correction process based on an assumed movement on a point on an eyelid as set forth in claim 8. Therefore, at least this feature is not disclosed by Simon.

Applicant submits that claims 10 and 11 are patentable at least by virtue of their dependency on claim 8.

In addition, claim 10 recites that “a degree of opening the closed eye is adjustable in said eye correction processing.” The Examiner contends that Fig. 6 discloses eye-shaped indicia. Applicant submits that fig. 6 only illustrates eye-shaped indicia that are fully open, and therefore, Simon does not disclose or suggest the claimed correction processing.

Claim 11 recites that the “eye image in said closed state is adjustable into the eye image in a predetermined open state by specifying a length of eyelashes, a direction of the eyelashes, a single-edged eyelid or a double-edged eyelid.” The Examiner contends that fig. 3 discloses this feature. Applicant submits that Simon is silent on adjusting a closed eye into an open state by specifying at least the length of eyelashes, and therefore, Simon does not disclose or suggest this feature.

D. Claim 9

Applicant has amended claim 9 and rewritten claim 9 in independent form. Claim 9 recites an image processing method using “input digital image data.” (emphasis added). Applicant submits that Simon does not disclose or suggest the use of digital images and, in fact, the dry transfer method disclosed in Simon would not work with digital image data since the dry transfer method must be performed on a hardcopy image (i.e. a photograph)(see col. 1, lines 36-64).

E. Claims 16 and 17

Claim 16 recites an image processing apparatus “for receiving digital image data from an image input device, performing preset image processing on the inputted digital image data and outputting processed image data as output image data to an image output device.” The Examiner contends that Siomon discloses the claimed combination, but the Examiner gives no details as to which elements on Simon allegedly correspond to the claimed apparatus elements.

Applicant submits that Simon does not disclose an apparatus with at least the claimed input device or the claimed output device.

In addition, Applicant submits that Simon also does not disclose an apparatus that performs the claimed preset image processing. To the extent Simon may disclose image processing, it is done manually by an operator by rubbing indicia on a photograph. The presence of an operator does not substitute for the presence of a structural element as claimed. The decision in In re Bell, 26 USPQ2d 1529 (Fed. Cir. 1993) makes clear that method steps, such as those performed by an operator, do not establish the presence of elemental steps of claims for an apparatus.

Applicant submits that claim 17 is patentable at least by virtue of its dependency on claim 16.

3. New Claims

With this amendment, Applicant adds claims 18-22¹. Applicant submits that claims 18-20 are patentable at least by virtue of the recitation “digital image data.” Claims 21 and 22 are patentable at least by virtue of their dependency, as well as the features set forth therein.

4. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Pursuant to 37 C.F.R. § 1.136, Applicant is submitting a petition (with fee) for one month of extension time herewith, making this response due on October 8, 2004.

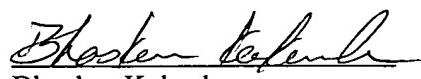
¹ The subject matter of the new claims is discussed, for example, at page 29, line 9 to page 30, line 6 of the Specification.

**Amendment Under 37 C.F.R. § 1.111
U.S. Serial No. 09/698,142**

Attorney Docket No.: Q61551

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Bhaskar Kakarla
Bhaskar Kakarla
Registration No. 54,627

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
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CUSTOMER NUMBER

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